DEP Assumption of Public Benefit" Determination

(• LD 229 Amendment Sections. XX, 12, 13, 16, 50, 51)

Sec. XX. 38 MRSA §1310-M is enacted to read:

§1310-M. Public Benefit Determination

Prior to submitting an application under section 1310-N for a license to construct or expand a solid waste disposal facility, a person must apply to the commissioner for a determination of whether the proposed construction or expansion provides a substantial public benefit. The commissioner shall provide public notice of the filing of this application, shall accept written public comment on the application for 20 days after the date of the notice, and shall issue a decision on the matter within 45 days of receipt of the application. Commissioner decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section. The commissioner's determination must be made in accordance with the following provisions.

A. For the following facilities, the commissioner shall employ a rebuttable presumption of public benefit:

(1) Solid waste disposal facilities less than 6 acres in size that accept only inert fill, construction and demolition debris, debris from land clearing and wood wastes; and

(2) Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, no more tham 15% of all solid waste accepted on an annual average which is not generated by the owner.

B. For all other facilities, the commissioner shall find that the proposed facility provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility:

(1) Meets immediate, short-term or long-term capacity needs identified in the state waste management and recycling plan in addition to capacity that is under development by the State Planning Office under chapter 24 or by any other party approved by the commissioner at the time of application;

(2) Except as provided in paragraph D, is consistent with the state waste management and recycling plan; and

(3) Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal.

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For purposes of this paragraph, capacity is "under development by the State Planning Office" when the State Planning Office commences construction of a facility or makes a written determination to commence construction of a facility within 2 years.

C. Except as provided in paragraph D, proceedings under this subsection are subject to the provisions of Title 5, chapter 375, subchapter IV.

D. An application for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling is not subject to the provisions of Title 5, chapter 375, subchapter IV or the requirements of paragraph B, subparagraph (2). In making the determination of whether expansion of such a facility provides a substantial public benefit, the commissioner shall consider the written information submitted in support of the application and any other written information the commissioner considers pertinent. In addition, the commissioner may hold a public meeting in the vicinity of the proposed expanion to take public comments and shall consider those comments in making the determination.

Sec. 12. 38 MRSA §1310-N, sub-§1, ¶B is amended to read:

B. In the case of a disposal facility, the commissioner has determined in accordance with section 1310-M that the facility provides a substantial public benefit; and

Sec. 13. 38 MRSA §1310-N, sub-§3, as repealed and replaced by PL 1993, c. 680, Pt. A, §37, is repealed.

Sec. 16. 38 MRSA §1310-X, sub-§§3, ¶C is amended to read:

C. For a commercial solid waste disposal facility ~~and prior to the adoption of the state plan and siting criteria under chapter 24, the department determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24~~, the ~~agency~~ commissioner determines that the provisions of section ~~2157~~ 1310-M are met.

Sec. 50. 38 MRSA §2157, as amended by PL 1993, c. 732, Pt. B, §3, is repealed

Sec. 51. 38 MRSA §2158 is repealed.

Current law

options available to the municipality following closure of the existing landfill;

C. The period reasonably needed by the municipality to raise its share of plan costs; and

D. The availability of state cost-share funds for the project.

2. Repealed.

§ 1310-H. Supervision and enforcement of schedules

The department shall monitor implementation of closure and remediation plans. In addition to any other remedy available to it by law, if the board determines, after opportunity for public hearing, that any party responsible for the implementation of a plan has failed substantially to meet the established time schedule or has failed to execute the provisions of the plan, the board may:

1. **Departmental implementation.** Authorize the department or its agents to enter onto the site and complete the remaining provisions of the plan; and

2. **Cost recovery.** Initiate proceedings to recover any costs incurred by the department in implementing a plan from the party or parties responsible for implementation of the plan and, in the case of a municipal landfill, to recover from the municipality the full amount of any grants and loans made to it under this article in connection with closure and remediation of the landfill.

§ 1310-I. Repealed.

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SOLID WASTE FACILITY SITING

§ 1310-N. Solid waste facility licenses

No person may locate, establish, construct, expand the disposal capacity of or operate any solid waste facility unless approved by the department under the provisions of this chapter. When the proposed facility is located within the jurisdiction of the Maine Land Use Regulation Commission, in addition to any other requirement, the department shall require compliance with existing standards of the commission.

1. **Licenses.** The board shall issue a license for a waste facility whenever it finds that:

A. The facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance;

B. In the case of a disposal facility, the facility provides a substantial public benefit; and

C. In the case of a disposal facility, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal. This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

2. Repealed.

2-A. **Aquifer protection.** The department may not issue a license for a solid waste disposal facility when it finds that the proposed facility overlies a significant sand and gravel aquifer or when the department finds that the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer it does not overlie, or to an underlying fractured bedrock aquifer.

A. "Significant sand and gravel aquifer" is defined as a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water likely to provide drinking water supplies.

B. "Fractured bedrock aquifer" is defined as a consolidated rock formation that is fractured and that is saturated and recharged by precipitation percolating through overlying sediments to a degree that will permit wells drilled into the rock to produce a sufficient water supply for domestic use.

C. In determining whether or not the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer or to an underlying fractured bedrock aquifer, the department shall require the applicant to provide:

(1) A thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers that could be affected by the proposed facility during normal operation or in the event of unforeseen circumstances including the failure of any engineered barriers to ground water flow. The assessment shall include a description of ground water flow rates, the direction of ground water flow in both the horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released from the proposed site and flow toward any classified surface water, significant sand and gravel aquifer or fractured bedrock aquifer.

2-B. Repealed.
2-C. Repealed.

2-D. **Setback requirements for transfer stations.** The department may not issue a permit or a license for a municipal solid waste transfer station unless the location of the handling site conforms to the following setback requirements.

A. For a transfer station on an island that is not connected to the mainland by a road, there is no setback requirement. The department shall review the proposed location of the handling site and determine whether the property setbacks proposed by the developer are reasonable and compatible with the abutting land uses. To the fullest extent possible, the department shall ensure that the handling site of a transfer station on an island is located in a manner that minimizes any adverse impact on the island residents.

B. For all other transfer stations, the handling site may not be within 250 feet of any abutting property boundary, unless:

(1) The department finds the abutting property to be a conforming use. If the department finds an abutting property to be a conforming use, the handling site may be within 250 feet of the boundary but not within 250 feet of any permanent structure on that abutting property; or

(2) The municipality obtains the written permission of all property owners within 250 feet of the proposed handling site.

2-E. **Automobile dismantling, recycling and salvage operations.** The department may not issue a license for a solid waste facility that is larger than 3 acres in size and that is the location of automobile dismantling, recycling and salvage if the automobile dismantling, recycling and salvage operations take place within 100 feet of a well that serves as

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a public or private water supply. This prohibition does not include a private well that serves only the facility or the owner's or operator's abutting residence.

2-F. Siting standards. The department shall issue a license for a new or expanded solid waste facility when it finds that the following standards, in addition to any other requirements of this chapter, have been met.

A. The applicant has the financial and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this chapter.

B. The applicant has made adequate provision for traffic movement of all types into, out of and within the proposed solid waste facility. The department shall consider traffic movement both on site and off site. In making its determination, the department shall consider the following factors:

(1) Vehicular weight limits;
(2) Road construction and maintenance standards;
(3) Vehicle type;
(4) Public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed facility; and
(5) Other relevant factors.

C. The applicant has made adequate provision for fitting the proposed solid waste facility harmoniously into the existing natural environment and the proposed solid waste facility will not unreasonably adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

D. The proposed solid waste facility will be built on soil types that are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment.

E. The proposed solid waste facility will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

F. The applicant has made adequate provision for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project, and the proposed solid waste facility will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.

3. Public benefit determination. The department shall determine the public benefit of a proposed facility according to the following provisions:

A. Prior to the initial adoption of the state plan, the department shall find that a proposed facility provides a substantial public benefit when the applicant demonstrates that the facility is designed, located and will be operated so that it is consistent with and meets the needs identified in the capacity needs analysis under former section 1310-O.

B. Subsequent to the initial adoption of the state plan and for those facilities not subject to chapter 24, subchapter IV, the department shall employ a rebuttable presumption of public benefit.

C. Subsequent to the adoption of the state plan and for those facilities subject to chapter 24, subchapter IV, the agency shall determine whether or not the proposed facility meets the requirements of section 2157.

4. Repealed.

5. Recycling and source reduction determination. The department shall find that the provisions of subsection 1, paragraph C, are satisfied when the applicant demonstrates that all requirements of this subsection have been satisfied.

A. The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law.

(1) The department shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility.

B. The applicant has shown consistency with the recycling provisions of the state plan.

This subsection does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

6. Terms and compliance schedules. Except as provided in subsection 6-D, licenses are issued under terms and conditions the department prescribes, and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this article and rules adopted by the board. A licensed or unlicensed municipal solid waste landfill operating on December 31, 1991 may continue to operate until December 31, 1992 unless the commissioner finds that continued operation of a landfill poses an immediate hazard to the public health or the environment, including, without limitation, a threat to a public or private water supply.

6-A. Relicensing. Notwithstanding subsection 6, a transfer station or a recycling facility licensed under this chapter is not subject to relicensing unless the standards in effect at the time the previous license was issued are changed or the facility significantly changes its operation. For the purposes of this subsection, a transfer station includes any associated area or use that is permitted by the license, such as areas used to burn or chip wood or brush and areas used to store or handle white goods or tires, but does not include any associated wood waste or demolition debris landfills.

6-B. Unlicensed landfills operating after December 31, 1992. Notwithstanding subsection 6, the commissioner shall enter into an agreement with a municipality allowing that municipality to operate an unlicensed municipal solid waste landfill after December 31, 1992 if the commissioner determines that the municipality has:

A. Selected an alternative solid waste handling or disposal option that is licensed or capable of being licensed;

B. Proposed to the department a reasonable and mutually acceptable schedule for implementing that option; and

C. Agreed to cease accepting waste at the unlicensed landfill on a date certain.

An agreement under this subsection between a municipality and the department may not include any provision that prevents the municipality from using its unlicensed landfill for the disposal of municipal solid waste during the term of the agreement. Notwithstanding any provision of an agreement

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entered into under this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

6-C. Summary of federal regulations. The commissioner shall provide a summary of the criteria for municipal solid waste landfills set forth in 40 Code of Federal Regulations, Part 258 (1992) to each municipality operating a licensed or unlicensed municipal solid waste landfill on the effective date of this subsection. The summary must describe the operational and, where possible, the economic implications under federal and state rules of accepting waste at a municipal solid waste landfill after October 8, 1993.

6-D. Solid waste facilities licensed under rules valid on or after May 24, 1989. A solid waste facility license issued under applicable solid waste management rules valid on or after May 24, 1989 remains in effect unless modified, revoked or suspended under section 341-D, subsection 3. These licensees must:

A. Comply with applicable operating rules adopted by the board;

B. Comply with annual facility reporting rules adopted by the board; and

C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility.

6-E. Unlicensed wood-waste, construction and demolition debris landfills. An unlicensed municipal solid waste landfill accepting waste consisting exclusively of wood, landscape refuse or construction and demolition debris and operating as of the effective date of this subjection, may:

A. Continue to operate until April 9, 1994; and

B. Continue to operate until December 31, 1995 if:

(1) The landfill was operating as of December 31, 1993; and

C. (2) The landfill is a separate and discrete disposal unit that does not overlie or overlap a municipal solid waste landfill that accepts or has accepted "household waste" as defined in 40 Code of Federal Regulations, Part 288, Section 258.2.

Municipalities continuing to operate unlicensed wood-waste, construction and demolition debris landfills under paragraph B shall submit a progress report to the department on or before January 31, 1995. The report must include a description of the alternative handling and disposal method that the town plans to implement prior to December 31, 1995 and an implementation schedule.

Notwithstanding this subsection, the commissioner shall order an unlicensed landfill to cease operating if the commissioner finds that continued operation of the landfill poses an immediate hazard to the public health or the environment, including without limitation a threat to a public or private water supply.

7. Criminal or civil record. The department may refuse to grant a license under this article if it finds that the applicant or, if the applicant is other than a natural person, any person having legal interest in the applicant has been

found guilty of a criminal or civil violation of laws administered by the department or other laws of the State, other states, the United States or another country.

8. Exemption. The disposal of construction and demolition debris, land clearing debris and wood wastes is exempt from the requirements of this chapter when:

A. The disposal facility is less than one acre in size;

B. The disposal facility is located on the same parcel of property where the waste is generated; and

C. Only one exempt disposal facility is located on a single parcel of property, except that additional disposal facilities on the same parcel that are less than one acre in size and that were in existence prior to the effective date of this subsection do not require a license under this chapter if no additional waste is disposed of in those additional facilities after the effective date of this subsection.

§ 1310-P. Repealed.

§ 1310-Q. Transfer of license

1. Transfer. No person may transfer a license issued pursuant to this Title without the transfer of the license being approved by the department prior to transfer of the ownership of the property, facility or structure which constitutes or is part of the solid waste disposal facility. The department, at its discretion, may require that the proposed new owner of the facility apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new owner can abide its terms and conditions and will be able to comply with the provisions of this Title. The department shall consider the extent to which the disposal facility was sited and developed and is currently operated to meet the capacity needs of municipalities within a specific geographic region. The department shall approve the transfer of license when, in addition to all other requirements of this Title, the applicant has demonstrated that:

A. The facility will continue to be operated to meet the municipal disposal capacity needs for which the facility was sited and developed and for which it is currently operated;

B. The applicant has made substantially equivalent, alternative provisions to satisfy these disposal capacity needs; or

C. These disposal capacity needs no longer exist.

§ 1310-R. Transition provisions

1. General. Except as otherwise provided, the provisions of this article apply to any new, expanded or existing solid waste disposal facility licensed or relicensed after the effective date of this article.

2. Recycling. The recycling requirements shall apply as follows.

A. The department shall apply the provisions of section 1310-N, subsection 5, paragraph A, when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on June 29, 1987, are inconsistent with section 1310-N, subsection 5, paragraph A, in which case those provisions shall apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts.

B. The department shall require an applicant for a new or expanded solid waste disposal facility or for

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a license renewal submitting a complete application prior to the adoption of the state plan to demonstrate that the facility furthers the purposes of section 2101 and satisfies the regulations under section 1310-N.

C. The provisions of section 1310-N, subsection 5, paragraph B, do not apply to the relicensing of any solid waste disposal facility licensed prior to June 29, 1987.

3. Public benefit. The public benefit requirements shall apply as follows.

A. Deleted.

A-1. The department shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the state plan to submit such information as the board requires to demonstrate that the proposed facility provides a substantial public benefit, including the information described in former section 1310-O.

B. The provisions of section 1310-N, subsection 1, paragraph B, and section 1310-N, subsection 3, do not apply to the relicensing of a solid waste disposal facility licensed prior to June 29, 1987.

C. The department shall apply the provisions of section 1310-N, subsection 3, paragraph A, to any application for a waste disposal facility receiving ash resulting from the combustion of municipal solid waste or from fuel derived from municipal solid waste when the application was accepted as complete by the department prior to July 1, 1989, and is still pending before the department on or after the date of the initial adoption of the state plan under chapter 24.

4. Incineration facilities. The department shall not license any new incineration facility prior to the adoption of the state plan and siting criteria.

§ 1310-S. Public and local participation

In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions shall apply to an application for a solid waste disposal facility.

1. Notification. A person applying for a license under this article or giving notice to the department pursuant to section 483, shall give, at the same time, written notice to the agency and to the municipal officers of the municipality in which the proposed facility may be located and shall publish notice of the application in a newspaper of general circulation in the area.

1-A. Preliminary notice. Sixty days prior to submitting an application with the department regarding a specific site for a solid waste disposal facility, the applicant shall notify by certified mail the municipal officers of the municipality in which the site is located or, in the unorganized territories, the county commissioners with jurisdiction over the site.

2. Public hearing. The department may hold an adjudicatory public hearing within the municipality in which the facility may be located or in a convenient location in the vicinity of the proposed facility. The hearing must be conducted in accordance with Title 5, chapter 375, subchapter IV.

3. Automatic municipal intervenor status. At its first meeting following the timely submission of a request for intervention, the board shall grant intervenor status to the municipal officers, or their designers, from the municipality in which the facility will be located. The intervenor status granted under this subsection shall apply in any proceeding for a license under this article. Immediately upon the board's automatic designation of intervenor status, the intervenors have all rights and responsibilities commensurate with this status. The board may grant this status only if requested by the municipal officers within 60 days of notification under subsection 1.

4. Financial assistance. The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under subsection 3, not to exceed $50,000. The board shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, waste generation and recycling studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this section which are incurred by the municipality after notification pursuant to subsection 1, are eligible for reimbursement under this subsection only if a completed application is accepted by the department. The board shall also establish rules governing:

A. The process by which an intervenor under subsection 3 may gain entry to the proposed facility site for purposes of reasonable inspection and site investigations under the auspices of the department; and

B. The reduction in the maximum level of reimbursable costs to the extent the municipality establishes by local ordinance any substantially similar financial requirements of the applicant.

5. Unincorporated townships and plantations. For the purposes of this section, county commissioners shall act as municipal officers for unincorporated townships, and assessors of plantations shall act as municipal officers for plantations.

§ 1310-T. Application fee

In addition to any fees imposed pursuant to section 352, the applicant shall pay a fee of $50,000 at the time of filing an application for a solid waste disposal facility. An application shall be considered incomplete and the department shall defer any review or processing of the application until the applicant has paid the full $50,000 fee. The fee shall be deposited in the Maine Environmental Protection Fund and shall be used only to make reimbursements and grants to the intervenor in the applicant's license proceedings pursuant to section 1310-S. The applicant releases all control over this money and does not retain any rights to audit the spending of these funds once the fee has been deposited in the Maine Environmental Protection Fund. Any portion of the fee not disbursed by the department for these purposes shall be reimbursed to the applicant, together with any interest that may have accrued on that portion. Upon request, the department shall provide an audit report to the applicant after all the application and appeal proceedings before the board have concluded.

§ 1310-U. Municipal ordinances

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Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, municipalities, except as provided in this section, may enact ordinances with respect to solid waste

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facilities that contain standards the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the solid waste facility with local zoning and land use controls, provided that the standards are not more strict than those contained in this chapter and in chapter 3, subchapter I, articles 5-A and 6 and the rules adopted under these articles. Municipal ordinances must use definitions consistent with those adopted by the board.

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the department within 30 days of its adoption.

§ 1310-V. Moratorium

Prior to 91 days after the First Regular Session of the 113th Legislature adjourns, the department shall not process or act upon any application for, and the board shall not issue, a license for a new commercial landfill facility or the substantial expansion of a commercial landfill facility. In processing applications after the moratorium, priority shall be given to applications for commercial landfill facilities used for the disposal of solid waste which is generated by an energy recovery facility designed to reduce the volume or alter the physical characteristics of municipal solid waste and to produce electricity through incineration. Notwithstanding the provisions of Title 1, section 302, any application for a new or substantially expanded commercial landfill facility pending or filed after the effective date of this article and any application for an expanded commercial landfill facility filed after October 8, 1987, shall be subject to departmental rules regarding solid waste adopted pursuant to section 1304 and the provisions of Private and Special Law 1987, chapter 28. Notwithstanding other provisions of this Title, the department shall not issue a license for a new or substantially expanded commercial landfill facility under this article or for an expanded commercial landfill facility, the application for which was filed after October 8, 1987, until it has adopted rules pursuant to the provisions of Private and Special Law 1987, chapter 28.

For the purposes of this section, the term, "commercial landfill facility" is defined pursuant to section 1303, subsection 1-C, except that the term does not include a waste facility that is controlled by the owners of an energy recovery facility or facilities and that is used exclusively for the disposal of ash or other wastes processed and thereby generated by such energy recovery facility or facilities.

§ 1310-W. Repealed

§ 1310-X. Future commercial waste disposal facilities

1. New facilities. Notwithstanding Title 1, section 302, the department may not approve an application for a new commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, including any applications pending before the department on or after September 30, 1989.

2. Relicense or transfer of license. The department may relicense or approve a transfer of license for a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, if the facility had been previously licensed by the department prior to October 6, 1989, and all other provisions of law have been satisfied.

3. Expansion of facilities. The department may license an expansion of a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989, if:

A. The department has previously licensed the facility prior to October 6, 1989;

B. The department determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. For a commercial solid waste disposal facility and prior to the adoption of the state plan and siting criteria under chapter 24, the department determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

4. Exemption. A commercial biomedical waste disposal or treatment facility is exempt from the prohibitions of this section if at least 51% of the facility is owned by a hospital or hospitals as defined in Title 22, section 382, subsection 7 or an affiliated interest or interests as defined in Title 22, section 396-L, subsection 1, paragraph A.

§ 1310-Y. Financial assurance

An owner or operator of a solid waste disposal facility licensed under section 1310-N shall provide the department assurance of its financial ability to satisfy the estimated cost of corrective action for known releases from the facility and its financial capacity to satisfy the estimated cost of closure and postclosure care and maintenance at the facility for a period of at least 30 years after closure. The board may adopt rules that increase or decrease that postclosure cart period, as long as those rules are consistent with applicable federal rules.

1. Acceptable forms of financial assurance. Acceptable forms of financial assurance are:

A. A letter of credit;

B. A surety bond;

C. An escrow account;

D. A reserve account calculated in a manner consistent with the United States Internal Revenue Code;

E. An irrevocable trust account; or

F. In the case of a municipal solid waste disposal facility, any of the allowable financial assurance mechanisms set forth in applicable federal rules.

2. Report. An owner or operator of a solid waste disposal facility shall annually prepare a report containing a sworn statement providing the year-end balance of any escrow, trust or reserve account established under this section. That report must be submitted to the commissioner by March 31st of each year or such other date as the commissioner may designate.

§ 1310-Z. Laboratory analyses

Laboratory analyses required in support of the licensing, operation, closure or postclosure care of a solid waste facility must be performed by a qualified laboratory. Six months after the adoption of laboratory certification rules required by Title 22, section 567, all laboratories must be certified or exempted from certification pursuant to those rules.

TIRE STOCKPILE ABATEMENT

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By February 1, 1993, the agency shall adopt rules establishing a waste reduction and recycling labeling program. The rules must include recycling emblems, standards for the use of the recycling emblems and standards for the use of the terms "reusable," "recyclable," "recycled," and "recycled content." To the fullest extent possible, emblems and standards adopted by the agency under this section must be consistent with emblems and standards adopted by the Northeast Recycling Council of the Council of State Governments and standards adopted by other northeastern states.

By January 1, 1993, the agency shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters on rule-making activities undertaken pursuant to this section.

1. Applicability. After July 1, 1993, a person may not use the recycling emblem or the terms "reusable," "recyclable," "recycled," and "recycled content" on a package or product that is sold or offered for sale, or in the promotion or advertisement of a package or product, unless that package or product conforms to the standards in the labeling program adopted by the agency under this section.

2. Repealed.

3. Repealed.

§ 2142. Advertising and marketing claims; waste reduction and recycling

A person who labels, advertises or promotes a product in violation of guidelines for the use of enviornmental marketing claims published by the Federal Trade Commission in 16 Code of Federal Regulations, Part 260 (1993), as amended, commits a violation of the Maine Unfair Trade Practices Act.

Sub-c IV

OFFICE OF SITING AND DISPOSAL OPERATIONS

§ 2151. Office of Siting and Disposal Operations

The Office of Siting and Disposal Operations, referred to as the "office" in this subchapter, is established to carry out the purposes of this subchapter. The director of the office shall administer the office in accordance with the policies of the agency and consistent with the state waste management and recycling plan.

§ 2152. Facility Siting Board

1. Board established. The Facility Siting Board, as established in Title 5, section 12004-D, subsection 4, is created to conduct a site screening and selection process for disposal facilities owned, operated or controlled by the agency. The board shall undertake this process in a manner consistent with the state waste management and recycling plan and provisions of section 2154 and shall make all final decisions on the choice of specific sites for solid waste disposal facilities under the jurisdiction of the agency. The office shall provide staff support to the Facility Siting Board.

2. Membership. The board consists of 5 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resources and to confirmation by the Legislature.

A. One of the members shall initially be appointed to a term of 3 years, 2 members to terms of 4 years and 2 members to terms of 5 years. The successor of each appointed member shall be appointed for a term of 5 years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall

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be appointed only for the remainder of that term. Each board member shall serve until the appointment and qualification of a successor.

B. No appointed board member may be an officer or employee of the United States Government or this State. All members of the board shall be residents of the State. Appointed members may be removed from the board by the Governor for cause.

C. The Commissioner of Environmental Protection and the Director of the Maine Geological Survey shall serve as technical advisors to the board.

3. Qualifications. The Governor shall select the membership of the board to include members of the general public and persons with expertise in engineering, hydrogeology, public health and government. The Governor shall also select the membership of the board to include broad geographic representation from all areas of the State.

4. Selection of officers; quorum. Annually, the board shall elect one of its appointed members as the chair of the board. Three members of the board shall constitute a quorum and the affirmative vote by 3 members shall be necessary for any action taken by vote of the board.

5. Compensation. The appointed board members shall be compensated as provided in Title 5, section 12004-D.

6. Meeting schedule. The board shall meet at least 4 times annually and at any time upon the call of its chair or upon the request in writing to the chair of 3 board members.

§ 2153. Siting criteria

1. Siting criteria. By September 1, 1992, the Facility Siting Board shall amend its rules for siting criteria for solid waste disposal facilities based on the following factors.

A. A site may be located in anywhere within the State and need not be in proximity to the site of waste generation.

A-1. Agency-owned sites for the disposal of special waste may not be located within a 5-mile radius of an existing commercial special waste landfill or a commercial incineration facility.

B. To the extent possible, a site must be located in proximity to the transportation systems, including existing or potential railroad systems, that are used to convey waste to the site or to convey residuals and materials to be recycled from the site.

C. The capacity or size of a site must be consistent with the projected demand as determined in the state plan.

D. A site and its considered use must be consistent with, and actively support, other waste management objectives, including waste reduction and recycling.

E. The projected price for site development, construction and operation must be fair and reasonable.

F. A site must meet preliminary environmental standards developed jointly by the department and the Maine Land Use Regulation Commission, including ground water standards, geological standards and standards to protect public drinking water supplies.

G. Existing uses on adjacent properties including

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public or private schools, may not be in significant conflict with or significantly jeopardized by the use of a site.

§ 2154. Site selection

1. Initial site screening. The Facility Siting Board shall conduct a site screening and selection process to identify solid waste disposal capacity sufficient to meet the projected needs identified in the state planning process under section 2123, subsection 6. The Facility Siting Board shall consider the need for geographic distribution of facilities to adequately serve all regions of the State. The Facility Siting Board also shall consider in its site selection process the need for landfill capacity to dispose of incinerator ash resulting from the combustion of domestic and commercial solid waste generated within its jurisdiction. Prior to recommending a site, the Facility Siting Board shall hold a public hearing in every municipality or plantation identified in the screening process as a potential site. For potential sites within an unincorporated township, the Facility Siting Board shall hold a public hearing within the vicinity of the proposed site. Prior to submitting a recommended site to the department for review, the Facility Siting Board shall find that the recommended site meets the standards adopted under section 2153.

2. Siting; general. Subsequent to the siting process under subsection 1, the Facility Siting Board shall identify additional sites as requested by the office and as capacity needs are identified in the state plan. The Facility Siting Board shall employ the same criteria and considerations employed under subsection 1. The Facility Siting Board shall hold a public hearing in each municipality within which the agency may recommend the location of any solid waste disposal or refuse-derived fuel processing facility.

3. Municipal reimbursement. At the conclusion of proceedings before the Facility Siting Board conducted pursuant to subsection 1, the agency shall reimburse a municipality for eligible expenses incurred as a result of that municipality's direct, substantive participation in proceedings before the Facility Siting Board. The amount reimbursed under this subsection may not exceed $50,000 for any municipality. For the purposes of this subsection, "eligible expenses" has the same meaning as "expenses eligible for reimbursement" under section 1310-S, subsection 4, and any rules adopted by the Board of Environmental Protection pursuant to that section.

§ 2155. Notification

The office shall notify the municipal officers of any municipality within which a waste disposal facility site is recommended under this subchapter of that recommendation. The office shall notify the municipal officers by certified mail within 30 days of making the recommendation. If the proposed site is located within the jurisdiction of the Maine Land Use Regulation Commission, the office shall notify the Maine Land Use Regulation Commission and the county commissioners in lieu of the municipal officers.

§ 2156. Facility development

1. State facility required. The office shall develop facilities sufficient to meet the projected needs for municipal solid waste identified in the analysis conducted under section 2123, subsection 6 and to serve all geographic areas of the State. The office may develop facilities sufficient to meet the projected needs for special waste identified in the analysis conducted under section 2123, subsection 6 and to serve all geographical areas of the state.

2. Subsequent facility development. Subsequent to any facility development under subsection 1, the office shall develop municipal solid waste disposal facilities as it determines is necessary to meet the capacity needs identified

in the state plan. In addition, the office may develop special waste disposal facilities as it determines is necessary to meet the capacity needs identified in the state plan. The office shall provide for solid waste disposal facilities by contracting with private vendors for facility design, construction or operation or, if necessary, undertaking facility development itself.

3. Agency ownership. The agency shall maintain ownership of any solid waste disposal facility it develops and shall maintain full control over the use of the facility or facilities.

This section does not preclude a municipality or regional association from developing and operating such facilities on its own initiative.

§ 2157. Review of proposed waste facilities

Subsequent to the adoption of the state plan, the Department of Environmental Protection may not approve an application of a new or expanded solid waste disposal facility requiring review under this section until the agency has approved the proposed facility under this section. An expansion of a commercial solid waste disposal facility or a solid waste disposal facility owned by a municipality or a regional association or a sanitary district created under chapter 11 or by special act of the Legislature is not subject to subsection 1, paragraph C, subparagraph (2) if the facility was licensed and in existence as of October 1, 1989, and at the time of application for the expansion.

1. Requirement. After the adoption of the state plan, a permit for a new or expanded solid waste disposal facility may not be issued unless the applicant demonstrates to the agency that the proposed facility:

A. Meets capacity needs identified in the state plan in addition to capacity that is under development by the office under section 2156 or by any other party approved by the office at the time of the application;

B. Is consistent with the state plan, except that this paragraph does not apply to expansions of commercial solid waste disposal facilities that accept only special waste for landfilling; and

C. Meets the following requirements:

(1) The proposed facility is consistent with local, regional or state waste collection, storage, transportation, processing or disposal; and

(2) After the adoption of the siting criteria, the proposed facility meets the criteria in section 2153.

Except as otherwise provided in this section, proceedings under this subsection are subject to the provisions of Title 5, chapter 375, subchapter IV.

Proceedings under this section for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling are not subject to the provisions of Title 5, chapter 375, subchapter IV.

In making the determination required under this section for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, the agency shall consider the written information submitted in support of the application, and any other written information the agency considers pertinent. In addition, the agency may hold a public meeting in the vicinity of the proposed expansion to take public comments and shall consider those comments in making the determination.

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Sec. B-4. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302 and Title 38, section 344, subsection 1-A, this Part applies to applications pending before the Maine Waste Management Agency and the Department of Environmental Protection on or after January 1, 1994.

§ 2158. Future commercial solid waste disposal facilities

After the adoption of the state plan, the agency shall not approve an application for a new commercial solid waste disposal facility. The agency may approve expansions of a commercial solid waste disposal facility after adoption of the state plan, if:

1. **Previously licensed facility.** The facility had been previously licensed by the Board of Environmental Protection prior to the adoption of the state plan; and

2. **Determination of compliance.** The agency determines that the provisions of section 2157 are met.

§ 2159. Real and personal property; right of eminent domain

The agency may acquire and hold real and personal property which it deems necessary for its purposes, is granted the right of eminent domain and, for those purposes, may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public use, any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining, operating and the closure of solid waste disposal facilities.

§ 2160. Procedure in exercise of right of eminent domain

The right of eminent domain granted in section 2159 may only be exercised after complying with the following procedures.

1. **Notice to owner.** The agency shall provide to the owner or owners of record notice of the following:

   A. The determination of the agency that it proposes to exercise the right of eminent domain;

   B. A description and scale map of the land or easement to be taken;

   C. The final amount offered for the land or easement to be taken, based on the fair value as estimated by the agency; and

   D. Notice of the time and place of the hearing provided in subsection 4.

Notice may be made by personal service in hand by an officer duly qualified to serve civil process in this State or by certified mail, return receipt requested, to the last known address of the owner or owners. If the owner or owners are not known or cannot be notified by personal service or certified mail, notice may be given by publication in the manner provided in subsection 4.

2. **Notice to tenant.** Notice shall be given to any tenant in the same manner notice is given to the owner of the property.

3. **Notice to the affected municipality.** Notice shall be given to the municipality in which the property to be acquired is located in the same manner notice is given to the owner of the property and shall be addressed to the municipal officers.

4. **Hearing.** The agency shall hold a public hearing on the advisability of its proposed exercise of the right of eminent domain. Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks before the time appointed in the hearing. The hearing notice shall include:

   A. The time and place of the hearing;

   B. A description of the land or easement to be taken; and

   C. The name of the owners, if known.

§ 2161. Condemnation proceedings

At the time it sends the notice in section 2160, the agency shall file in the office of the county commissioners of the county in which the property to be taken is located and cause to be recorded in the registry of deeds in the county plans of the location of all lands, real estate, easements or interest therein, with an appropriate description and the names of the owners thereof, if known. When for any reason the agency fails to acquire property which it is authorized to take and which is described in that location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect the location and file a new description. In that case, the agency is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the agency is not liable for any acts which would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon, possession may be had of all the lands, real estate, easements or interests therein and other property and rights as aforesaid to be taken, but title shall not vest in the agency until payment for the property is made.

§ 2162. Office assistance in regional association siting

Upon request by a regional association, the office may provide technical assistance to a regional association in the establishment of approved waste facilities, including assistance in planning, location, acquisition, development and operation of the site. The regional association shall describe fully the need and justification for the request. The office may request information from the regional association necessary to provide assistance.

§ 2163. Exempt facilities

The following types of solid waste disposal facilities are exempt from the provisions of this subchapter:

1. **Inert fill.** Solid waste disposal facilities less than 6 acres in size that accept only inert fill, construction and demolition debris, debris from land clearing and wood wastes; and

2. **Generator-owned facilities.** Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average which is not generated by the owner. Notwithstanding this section, a solid waste disposal facility receiving ash resulting from the combustion of municipal solid waste or fuel derived from municipal solid waste is not exempt unless a completed application for the facility has been accepted by the department prior to July 1, 1989.

§ 2164. Household and small generator hazardous waste

The office shall develop and implement by July 1,

AGREEMENT REGARDING SOLID
WASTE LANDFILL DEVELOPMENT

between

LINCOLN PULP & PAPER CO., INC.
and
MAINE WASTE MANAGEMENT AGENCY

Dated: July 20, 1992

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AGREEMENT

This Agreement entered into this 20th day of July, 1992, by and between Lincoln Pulp & Paper Co., Inc. ("Lincoln") a Delaware corporation with a place of business in Lincoln, Maine and the Maine Waste Management Agency ("MWMA") a governmental agency of the State of Maine with its office in Augusta, Maine.

WITNESSETH

WHEREAS, Lincoln has acquired a parcel of land located in Township 2, Range 8 NWP, in the County of Penobscot, State of Maine more particularly described in the deed from Sylvan Properties Co. to Lincoln dated July 27, 1990 recorded in the Penobscot County Registry of Deeds at Book 4695, Page 241 and attached hereto as Exhibit A (the "Site"), which has been the subject of detailed investigation and prepermitting effort conducted by Lincoln, at its expense, with respect to its suitability as a proposed landfill, such expenses including, but not limited to, the costs of extensive site exploration, surveys, title searches, wetlands delineation and mapping and the gathering of hydrogeological, soils and groundwater data, and all other costs associated with such investigation and evaluation (all such work and data hereinafter cumulatively referred to as "Lincoln's Site Evaluation Data"); and

WHEREAS, Lincoln requires a site to landfill certain of its special wastes, acquired the Site for that purpose and is willing to enter into the cooperative effort described herein with MWMA so as to enable the development of a landfill at the Site that will provide capacity to service Lincoln's needs; and

WHEREAS, Lincoln has incurred to date a total cost of $1,037,620 to acquire Lincoln's Site Evaluation Data; and

WHEREAS, the investigation by Lincoln and its consultants indicates that the Site has the potential to be licensed as a special waste landfill meeting all applicable legal requirements; and

WHEREAS, Lincoln has obtained a Determination of Environmental Feasibility for development of the Site as a landfill pursuant to Chapter 401, Section 1(E) of the Solid Waste Management Rules; and

WHEREAS, MWMA is charged with the statutory obligation of locating landfill sites sufficient to meet capacity needs for solid waste, including special waste, generated in the State of Maine; and

WHEREAS, MWMA has performed a preliminary review of Lincoln's Site Evaluation Data and that review indicates that the Site warrants further review and evaluation as a potential special waste landfill to be developed by MWMA for its use and use by Lincoln; and

WHEREAS, further review, evaluation and development of the Site by MWMA would entail additional detailed review and analysis of Lincoln's Site Evaluation Data as well as access by MWMA to the site for further environmental investigation (such further review and investigation hereinafter referred to as "MWMA's Evaluation"); and

WHEREAS, MWMA wishes to have the right to proceed to use MWMA's Evaluation data and Lincoln's Site Evaluation Data and may thereafter desire to obtain a license from the Maine Department of Environmental Protection (the "License") to develop and operate the Site as a solid waste landfill, and, if the License is obtained, to construct and operate the Site as a special waste landfill (the "Landfill"); and

WHEREAS, Lincoln needs assurances that after its efforts to reuse and recycle to the extent practicable, it will have access to space at the Landfill for its special waste as well as for certain special waste from the towns identified herein; and

WHEREAS, MWMA desires to obtain from Lincoln the ability to treat in Lincoln's waste treatment plant, leachate generated from the Landfill;

NOW THEREFORE, Lincoln and MWMA agree to cooperatively proceed with the development of the Site as a solid waste landfill in accordance with the following terms and conditions and subject to the following limitations:

1. <u>Analysis and Option Fee</u>. Upon execution of this Agreement, MWMA shall pay Lincoln the nonrefundable sum of Two Hundred and Fifty Thousand Dollars ($250,000) in consideration of

(a) Lincoln making available to MWMA Lincoln's Site Evaluation Data under the terms and conditions specified herein;

(b) Lincoln allowing MWMA, access to the Site under and in accordance with the terms and provisions specified herein; and

(c) Lincoln granting to MWMA the option to purchase the Site described herein.

2. <u>Access to Data and Site</u>. For a period of 60 days from the date hereof, MWMA will have

(a) Subject to the confidentiality commitments referenced in Section 13 hereof, full and complete access to all of Lincoln's Site Evaluation Data at such time(s) and place(s) as may be specified by Lincoln for review and analysis of such data by MWMA, and

(b) The right to conduct MWMA's Evaluation at the Site, at MWMA's cost and expense, for which purpose MWMA shall have access to the Site, provided that there is no damage or disruption to the Site other than that necessary to perform MWMA's Evaluation. Immediately upon completion of MWMA's Evaluation, MWMA shall, at its expense, restore the site to its original condition prior to the MWMA Evaluation, to the fullest extent it is possible to do so. Further, MWMA shall indemnify, defend and hold Lincoln Harmless from and against any and all liability, loss, damages, expenses, costs and claims resulting from or relating to MWMA's access to the Site, presence on the Site or utilization of the Site, including without limiting the generality of the foregoing any diminution in value of the Site resulting from any of the foregoing; provided, however, that MWMA does not hereby waive any defense of governmental immunity which it may have as to actions or claims by persons, partnerships, corporations or any other entities not party to this Agreement.

3. **Notification of Intent to Proceed.** Within 74 days following the date hereof, MWMA shall notify Lincoln in writing if it intends to proceed to obtain approval of the Site from the Facility Siting Board (the "Board") and, upon receipt of Board approval, to seek a License for the Site. If by 5:00 p.m. on the 74th day, MWMA either (a) notifies Lincoln that it does not intend to seek a License or (b) fails to notify Lincoln of its intent to proceed, then this agreement shall terminate and neither Lincoln nor MWMA shall have any further obligation hereunder, except that (a) Lincoln shall retain for its own account the Analysis and Option Fee described in Section 1 above, and (b) MWMA's obligations to restore the Site and indemnify Lincoln described in Section 2 above and MWMA's obligation to return Lincoln's Site Evaluation Data described in Section 13 hereof shall survive such termination.

4. **Request for Public Hearing.** In the event MWMA notifies Lincoln of its intent to proceed pursuant to Section 3 above, MWMA shall immediately request that the Board, at the Board's next regularly scheduled meeting following the date of such notification, above, schedule as promptly as possible a public hearing on the Site pursuant to 38 M.R.S.A. §2154.

5. **Cooperation Regarding Towns.** Throughout the term of this Agreement, Lincoln and MWMA shall cooperate in connection with any discussions, presentations or other contacts or communications with public officials in the towns identified in accordance with the provisions of Section 11(e) hereof. Their cooperative effort shall be governed by the following guidelines:

(a) Lincoln will provide such assistance to MWMA as Lincoln deems appropriate in dealing with public officials from said Towns, provided, however, that Lincoln shall not be required to make any further investment in the Site design, testing, planning, engineering or evaluation in connection with providing such assistance.

(b) Any presentation regarding the Site by MWMA, its employees, agents or consultants at, preparatory to, or in connection with, the above described public hearing, shall be coordinated with Lincoln, and MWMA shall consult with Lincoln regarding the content of and procedure for any such presentation.

6. **Deadline for Board Action; Negative Determination**. Upon the earlier of (a) 180 days following the date hereof or (b) negative action by the Board pursuant to 38 M.R.S.A. §§ 2102 through 2222, this Agreement shall terminate and neither party shall have any further obligations hereunder, except that (a) Lincoln shall retain for its own account the Analysis and Option Fee described in Section 1 hereof, (b) MWMA's obligations to restore the Site and indemnify Lincoln described in Section 2 hereof and MWMA's obligation to return Lincoln's Site Evaluation Data Described in Section 13 hereof shall survive such termination, and (c) MWMA shall consult with Lincoln and cooperate fully with Lincoln in all respects regarding any and all announcements or communications to the public or the press involving the Board's action.

7. **Obligations Subsequent to Board Approval**. In the event of affirmative action by the Board pursuant to 38 M.R.S.A. §§ 2101 through 2222, then

(a) MWMA shall pay to Lincoln $787,620 representing the full, verified cost of Lincoln's Site Evaluation Data ($1,037,620), less the $250,000 paid under Section 1 hereof, in four equal installments of $196,905 payable as follows:

i. First installment within 30 days of the date of the Board's affirmative action;

ii. Second installment within 180 days of the date of the Board's affirmative action;

iii. Third Installment within 360 days of the date of the Board's affirmative action;

iv. Fourth Installment within 540 days of the date of the Board's affirmative Action.

(b) MWMA shall proceed promptly and use its best efforts to obtain the License as expeditiously as possible. Lincoln will provide such assistance and support to MWMA as Lincoln deems appropriate in connection with the permitting process; provided, however, that Lincoln shall not be required to make any further investment in Site design, testing, planning or engineering in connection with providing such assistance.

8. Purchase of Site. (a) MWMA shall purchase the Site within thirty (30) days following the date of affirmative action by the Board pursuant to 38 M.R.S.A. §§ 2101 through 2222, for the sum of $390,434, plus an amount equal to the interest that would accrue on a loan of such amount at the rate of 8% per annum from July 20, 1992 through the date of Closing, (the "Purchase Price"). MWMA shall specify a date for closing (the "Closing") by written notice to Lincoln, such Closing to occur within said 30 day period.

(b) The Purchase Price shall be paid by execution and delivery by MWMA of a negotiable promissory note payable to the order of Lincoln in a principal amount equal to the Purchase Price, and the note shall bear interest at the rate of 8% per annum. The promissory note shall be payable in a single installment of all principal and interest accrued thereon, which shall become due and payable upon the occurrence of the first to occur of the following events:

(i) Ninety days following the grant of a License for the Site to MWMA; or

(ii) Upon Lincoln exercising its rights to lease the Site as described in Section 10 hereof.

The promissory note shall contain commercially reasonable terms and provisions, acceptable in all respects to Lincoln, including without limitation, provision for payment of Lincoln's costs and expenses, including attorneys' fees, incurred in connection with collection of any amounts due under the Promissory Note and/or realization upon any security provided for the Promissory Note.

(c) Against payment of the purchase price by MWMA to Lincoln on the closing date specified in the notice of exercise of the option, Lincoln shall sell, assign and convey good and marketable fee simple title to the Site to MWMA by good and sufficient warranty deed, free and clear of all liens, encumbrances or other defects that would render it unmarketable, subject only to applicable land use regulation and the restrictions described in Exhibit A.

(d) Possession of the Site shall be delivered to MWMA on the closing date.

(e) MWMA shall be responsible for performing its own title search and shall give Lincoln notice of defects in title at least 10 days prior to the Closing. Lincoln shall have a good faith obligation to use diligent efforts to cure any such title defects, provided, however, that Lincoln shall not be obligated to expend any funds to do so. Lincoln shall give written notice to MWMA with seven days of MWMA's notice to Lincoln of the steps Lincoln intends to take to cure any such title defects. Lincoln shall be entitled to a reasonable extension of the date for Closing to perform such work. In the event MWMA determines that the steps to be taken by Lincoln are insufficient in part or as a whole, it may elect to either (i) terminate this Agreement, or (ii) take steps to cure the title defect itself in at its expense, and in such latter case, MWMA shall be entitled to an extension of the date for Closing for a reasonable period for the performance of such work.

(f) Lincoln agrees to pay its proportional share of real estate property taxes assessed with respect to the Site as of the date of Closing, together with any applicable penalties or interest. Lincoln shall pay its proportionate share of all betterments pending or assessed against the Site as of the date of Closing. Lincoln shall provide evidence to MWMA at Closing that all tax bills and betterments have been paid through the date of Closing or provision has been made for their payment. Lincoln's agreement to pay its proportionate share of taxes shall include the following:

(i) Commercial forestry excise tax levied pursuant to 36 M.R.S.A. §2722;

(ii) Assessments, penalties or other amounts made payable due to the removal of the Site from open space or other forms of tax reduction, shelter or protection;

(iii) Any payment or penalty assessed for withdrawal of the Site from the Tree Growth Tax Law as a result of the sale of the Site to MWMA or as a result of the actions of MWMA after the sale of such Site; and

(iv) Any amounts due under the so-called Spruce Budworm Tax assessed pursuant to 12 M.R.S.A. §8427.

(g) Each party acknowledges that the transfer of title to the Site is exempt from real estate transfer taxes pursuant to 36 M.R.S.A. §4641-C(1).

(h) Pursuant to 36 M.R.S.A. §5250-A $2\frac{1}{2}$ percent of the purchase price shall be withheld from the proceeds at Closing and subsequently forwarded to the State Tax Assessor within 30 days of the date of Closing, unless Lincoln furnishes to buyer a certificate of Lincoln stating, under penalty of perjury, that as of the date of transfer, Lincoln is a resident of the State of Maine, MWMA or Lincoln has received from the State Tax Assessor a certificate stating that no tax is due on the gains from the transfer, or Lincoln has provided adequate security to cover any such tax liabilities.

(i) In the event that any of Lincoln's obligations or conditions set forth in this Agreement are not satisfied, MWMA, in its sole discretion, may elect to waive such obligation or condition and close its acquisition of the Site.

(j) Lincoln represents that the Site is not subject to any lease or to any other possession or estate or to any option, right of first refusal or contract of sale. Lincoln has the full power and authority to execute, deliver and perform this Agreement and all contracts and documents referred to in this Agreement.

(k) Lincoln represents that no portion of the property shall be occupied by any person or entity under any oral or written lease, easement, license or other claim or contract or in any other manner as of the date of Closing.

(l) In the event MWMA shall fail or refuse to close in accordance with the provisions of this Agreement or otherwise default hereunder, Lincoln shall have the option to (i) terminate this Agreement or (ii) pursue any other remedies Lincoln may have at law or in equity, including without limitation, specific performance, reimbursement for all costs and expenses reasonably incurred in the enforcement of its rights hereunder, and damages arising from MWMA's breach, including consequential damages.

(m) MWMA acknowledges and confirms that it shall undertake its own evaluation of the Site, the title thereto, the condition thereof and its suitability for development as a landfill. Lincoln hereby disclaims all representations and warranties regarding the Site and the foregoing matters and MWMA hereby assumes all risk associated with its purchase and development of the Site.

(n) MWMA shall have the right to record notice of this purchase option, in form reasonably acceptable to both parties, in the applicable registry of deeds.

9. Reserved.

10. Site Utilization and Leaseback. (a) The use of the Site shall be restricted to development and operation of a solid waste landfill, or other facilities providing for the disposal or recycling of solid waste, during the first 30 years following MWMA's purchase of the Site. MWMA shall be prohibited from constructing any facility or improvement at the Site that would prohibit or impair, in any way, the construction and operation of a landfill of generally the same size, nature and scope, and in the same location as is delineated in Lincoln's Site Evaluation Data. Such restriction shall be referenced in the deed to the Site and shall run with the land as a covenant touching and concerning the land, binding upon MWMA, its successors and assigns and any transferees, lessees or future owners of the Site or any portion thereof.

(b) At any time following the expiration of 30 days after the Closing, Lincoln shall have the right to notify MWMA in writing of the amount of landfill space Lincoln requires at the Site. MWMA shall have a period of 90 days following the date of such written notice to either (i) enter into an unconditional written commitment with Lincoln to construct a landfill providing the specified capacity within 270 days of the date thereof, or (ii) communicate to Lincoln that it will not make such commitment. Failure to respond within the 90 days constitutes a negative response. In the event MWMA either (i) responds negatively to Lincoln's request, or (ii) fails to complete construction of the landfill space within the 270 day period, then Lincoln shall have the right, exerciseable at any time thereafter, to lease the Site from MWMA for purposes of construction of a solid waste landfill or other solid waste disposal facility.

(c) Lincoln shall exercise its option to lease the Site by written notice provided to MWMA. Such notice shall specify a lease commencement date within 30 days following the date of such notice. Such lease shall have a term equal to the greater of (i) 30 years following its commencement date, or (ii) the useful life of the entire landfill facility planned by Lincoln for the Site, including all phases and cells thereof. The lease will be a commercially reasonable triple net ground lease (requiring payment by Lincoln of property taxes, insurance, utility charges and maintenance as additional rent) and the lease will allow full utilization of the Site for the purpose of construction and operation of a solid waste landfill or other solid waste disposal facility by Lincoln. The base rent under the lease shall be determined on the following basis:

(i) In the event Lincoln exercises its lease option prior to a License being granted to MWMA for the Site, base rent shall equal the amount due and owing under the promissory note described in Section 8(b) hereof, and forgiveness of such amount shall constitute payment in full of base rent by Lincoln; and

(ii) In the event Lincoln exercises its lease option after a License is granted to MWMA for the Site, base rent shall be one dollar ($1.00).

In the event base rent is determined and paid in accordance with provisions of Section 10(c)(i) above, the lease shall contain an exclusive option for Lincoln to purchase the Site, at any time during the term of the lease, within 30 days following written notice to MWMA, for a purchase price of one dollar ($1.00). The terms and conditions of the purchase and sale effected upon exercise of Lincoln's option shall be identical to those set forth in Section 8(c) through (m) hereinabove, except that the relative positions of Lincoln and MWMA as Buyer and Seller shall be reversed. The foregoing purchase right may be exercised simultaneously or at any time following Lincoln's exercise of its right to lease the Site; provided however, such purchase right may not be exercised until 810 days following the date of this Agreement. Upon purchase of the Site by Lincoln, this Agreement shall terminate and Lincoln shall have no further obligations hereunder except Lincoln's obligation of payment, if any, under Sections 10(d) and (e) hereof.

The lease shall contain covenants restricting MWMA from selling, assigning, transferring or otherwise disposing of any interest in, granting any rights to, mortgaging or otherwise encumbering all or any portion of the Site during the term of the lease, without Lincoln's prior written consent.

The parties shall negotiate in good faith a commercially reasonable lease including the foregoing basic terms and conditions. In the event the parties are unable to reach agreement upon the lease within 30 days of Lincoln's written notice of intent to lease, those terms and conditions of the lease not specified or already agreed upon between the parties, shall be established by the following procedure in the order of priority specified

(i) First, by determination of a single individual unaffiliated with either party and acceptable to both parties experienced in commercial leasing of real estate; and

(ii) Second, by majority determination of a three member panel of individuals unaffiliated with either party and experienced in commercial leasing of real estate.

Following written notice of impasse in lease negotiations from either party to the other, the parties shall have 10 days to choose a single arbiter. If no arbiter can be agreed upon, then the first choice of each party an arbiter shall be a panel member, and the panel members so chosen shall choose the third panel member within 10 days thereafter. The panel shall render its decision within 30 days. Its decision will be final, binding and non-appealable by either party.

(d) In the event Lincoln exercises its option to lease, Lincoln shall have the right to review and copy, and shall have a license to make use of MWMA's data related to the Site and Lincoln's Site Evaluation Data, including without limitation, all testing results, design materials, engineering studies and other engineering work, the License application and any and all such other data and materials as relate in any way to the Site and the development of a solid waste landfill at the Site, in connection with application for any and all necessary permits and approvals for the proposed facility and development of the facility. Lincoln shall purchase any materials and data generated by MWMA subsequent to the date of this Agreement that it uses in connection with application for such permits and approvals at MWMA's verified cost for the materials and data so used. Thereafter, Lincoln shall be the sole and exclusive owner of any such materials so purchased and MWMA shall have no claim to right, title or interest therein. Nothing herein shall prohibit Lincoln from generating its own materials even though such materials may duplicate existing MWMA data and materials. Lincoln's rights under this Section 10(d) shall continue throughout the term of the lease and/or the period of its ownership of the Site in the event Lincoln exercises its $1.00 purchase option granted under Section 10(c) above.

(e) In the event Lincoln exercises its option to lease and MWMA then holds the License or thereafter receives the License, MWMA agrees to cooperate fully with Lincoln, at Lincoln's request, in seeking a transfer of the License from MWMA to Lincoln, and shall work with Lincoln in seeking the consent of all necessary governmental boards, bodies and agencies required in connection therewith. If Lincoln requests and receives a transfer of the License, Lincoln shall pay to MWMA, as a condition of transfer, MWMA's full verified cost of all materials and data generated by MWMA subsequent to the date of this Agreement and used in obtaining the License. Upon request MWMA shall supply Lincoln with its estimate of its full verified cost as a basis for Lincoln making its decision whether to seek transfer of the License. Lincoln's rights under this Section 10(e) shall continue throughout the term of the lease and/or the period of its ownership of the Site in the event Lincoln exercises its $1.00 purchase option granted under Section 10(c) above.

(f) Lincoln shall not be obligated to license or construct a landfill at the Site; however, in the event Lincoln does seek to permit and develop a landfill at the Site, it will, to the extent practicable, incorporate into its application such design considerations as requested by MWMA to accommodate the special waste for which MWMA is responsible, to the extent landfill space will be available after taking into account Lincoln's determination of its needs, provided, however, that MWMA shall bear all costs and expenses of developing and incorporating into Lincoln's application its requested design considerations and all licensing, design, engineering, construction and operating costs and expenses associated with or resulting from the accommodation of MWMA's requirements in developing the Site and allowing disposal of waste thereat.

(g) Any landfill facility constructed by Lincoln at the Site shall be constructed incrementally such that the facility is constructed in increments limited in capacity to Lincoln's projected capacity needs over the following 36 month period.

(h) MWMA shall have the option to cancel the lease at any time upon 6 months written notice to Lincoln upon satisfaction of, and subject to, the following conditions:

(i) MWMA pays to Lincoln as of the termination date an amount equal to the sum of (a) the base rent paid under the lease as described in Section 10(c) above, plus interest at the rate of 8% per annum, plus (b) the unamortized and undepreciated portion of Lincoln's capital cost of the facility as then reflected on Lincoln's books of account, plus (c) an amount equal to any liability of Lincoln for tax on gain realized as a result of such termination or for tax resulting from depreciation recapture pursuant to applicable provisions of federal and state tax law; and

(ii) MWMA contractually commits to Lincoln to construct, continue to construct, complete construction by Lincoln's then targeted completion date for its landfill facility, and operate a landfill facility that will provide to Lincoln landfill capacity at least equal to Lincoln's then existing plans for utilization of the Site for solid waste disposal including all present and future cells and phases contemplated by Lincoln for the Site; and

(iii) Capacity at the Site will be made available to Lincoln at the prices and under the terms and conditions specified in Section 11 below.

In the event MWMA fails to complete construction of the landfill by Lincoln's targeted completion date, MWMA shall pay to Lincoln the difference in Lincoln's actual cost of disposal for the period of delay compared to its cost (as specified in Section 11 below) had the landfill been completed on a timely basis.

In the event of any conflict between the exercise of Lincoln's purchase option under the lease and MWMA's exercise of its foregoing right of termination, MWMA's termination right shall have priority.

(i) In the event Lincoln's $1.00 purchase option under Section 10(c) hereof is still in effect, and either (a) MWMA has obtained a License or (b) 810 days has transpired since the date of this Agreement, then Lincoln shall have the right, in lieu of exercising its $1.00 purchase option, to require MWMA to pay upon demand an amount equal to the base rent paid under the lease described in Section 10(c) above, plus interest thereon at 8% per annum.

11. Landfill Capacity Commitment. (a) In the event MWMA constructs and operates a landfill at the Site, it shall design, construct and operate the landfill in such a manner so as to assure that landfill space is available for disposal by Lincoln (and/or its "affiliated companies") of up to 17,500 cubic yards of special waste per annum throughout the useful life of the landfill, and any expansions thereof or additions thereto from Lincoln's (and/or its "affiliated companies") operations. Lincoln shall pay a disposal fee (at the time of actual disposal) of the lesser of (i) $29.17 per cubic yard of special waste (which represents Lincoln's cost of disposal in the event it were to proceed with a landfill at the Site, as verified by Lincoln's consulting engineers), or (ii) then prevailing commercial rates charged at the facility. Upon execution of this Agreement, the disposal fee specified in (i) above shall be increased by a factor equal to the percentage increase in the United States Bureau of Labor Statistics Producer Price Index (the "PPI Index") from January 1, 1991 through the date hereof, and thereafter the disposal fee shall be increased upon each anniversary of the date hereof by a factor equal to the percentage increase in the PPI Index from the previous anniversary through the then current anniversary.

"Affiliated companies" means any corporation or other business entity controlled by, controlling or under common control with Lincoln.

(b) Within 30 days prior to the commencement of each calendar quarter Lincoln shall provide to MWMA a projection of its needs for space at the landfill for the next four calendar quarters. The first quarter shall be a firm reservation and the remaining three quarters shall be an estimate.

(c) Lincoln shall have the right to dispose of its special Waste in excess of the requirements specified in Section 11(a) above, on a second priority basis subject only to ash disposal needs of municipal waste incinerators located in Maine, at normal and ordinary rates being charged to other landfill users.

(d) In the event MWMA at any time during the 30 year period following MWMA's purchase of the Site abandons its construction or operation of a solid waste landfill at the Site, or otherwise discontinues its operation of a landfill at the Site for a period in excess of 30 consecutive days, or 60 non-consecutive days in any 12 month period, then Lincoln shall have the right to lease the Site under the terms and conditions and at the rent specified in Section 10(c) hereof, including the provisions of Sections 10(d) and (e) relating to access to data, information and the License.

(e) During all times that a landfill is being operated at the Site by MWMA, (i) such municipalities located in close proximity to the Site as MWMA shall, in its discretion, deem appropriate for receipt of the following benefits, shall have the right to dispose of, at no charge, all special waste generated by such municipalities or political subdivisions thereof or quasi-municipal entities located therein, but excluding special waste generated by commercial and industrial establishments located therein; and (ii) such municipalities shall be entitled to dispose of, at no charge, the ash generated by incineration of such municipalities' municipal waste stream, and MWMA shall either negotiate an arrangement with Penobscot Energy Recovery Company ("PERC"), or any other incineration facilities utilized by such municipalities to provide credits to such municipalities against their tipping fees, or pay to such municipalities on a quarterly basis an amount equal to the fees charged for disposal of such ash by PERC.

(f) The terms and conditions set forth in this Section 11 shall constitute covenants running with the land and shall touch and concern the land. Such terms and conditions shall be incorporated into the deed to MWMA and shall be binding upon MWMA's successors and assigns as well as all transferees, lessees or future owners of the Site or any portion thereof.

12. Leachate Treatment. During all times that a landfill is being operated by MWMA at the Site, and so long as Lincoln owns and operates its waste treatment facility in Lincoln, Maine, Lincoln shall treat, in its waste treatment facility at Lincoln, Maine, all leachate generated by said landfill, subject to the following conditions:

(a) Receipt by Lincoln of all necessary governmental approvals for the leachate treatment, all cost of seeking and obtaining such approvals to be borne by MWMA; and

(b) The availability of treatment capacity after satisfaction of all Lincoln's present and future treatment needs; and

(c) Payment by MWMA of all transportation costs and a fee for treatment based upon all costs and expenses, of any nature, incurred in connection with Lincoln providing such treatment, as determined by Lincoln based upon MWMA's flow, biochemical oxygen demand ("BOD") and solids, and including, without limitation, allowances for depreciation, amortization of required capital costs and allocation of overhead; and

(d) Satisfaction of such effluent quality standards and peak flow limitations for leachate as may be imposed by Lincoln from time to time for the protection of its treatment facility and preservation of all licenses and permits necessary for its operation.

13. Lincoln's Site Evaluation Data. (a) Until such time as MWMA has paid the full verified cost of Lincoln's Site Evaluation Data pursuant to the provisions of Section 7(a) hereof, Lincoln's Site Evaluation Data shall be and remain the sole and exclusive property of Lincoln and MWMA shall have no right, title or interest therein and shall assert no claims with respect thereto, except for the right to review and utilize Lincoln's Site Evaluation Data as specifically set forth herein. In the event of termination of this Agreement for any reason whatsoever, including without limitation termination pursuant to Sections 3 or 6 hereof, MWMA shall immediately return to Lincoln all Lincoln's Site Evaluation

Data, and all copies or other embodiments thereof, regardless of media, that are in MWMA's possession or in the possession or under the control of its employees, agents or consultants.

(b) Until title to Lincoln's Site Evaluation Data passes to MWMA in accordance with the provisions of Section 13(a) above, MWMA shall have only a license to use Lincoln's Site Evaluation Data in accordance with and subject to the terms hereof, and the terms and provisions of the Confidentiality Agreement among Lincoln, MWMA and Robert G. Gerber, Inc. shall continue to apply to the Lincoln Site Evaluation Data and any and all other information subject thereto with full force and effect. MWMA's obligations thereunder shall be binding upon MWMA its employees, agents and other representatives.

14. Security for Payment Obligations. As security for MWMA's obligations hereunder, including its obligations of payment pursuant to Section 7 hereof and under the promissory note described in Section 8(b) hereof, MWMA covenants and agrees as follows:

(a) MWMA hereby grants to Lincoln, its successors and assigns, and Lincoln hereby retains a security interest in Lincoln's Site Evaluation Data as described herein and in any and all other information, data and materials of any nature whatsoever produced or developed by MWMA or for MWMA with respect to the Site and/or the construction of a landfill or other solid waste disposal facility thereat, and the License, together with all substitutions, additions, products, replacements and proceeds thereof and therefrom, including data and materials hereafter acquired (collectively the "Personal Property Collateral"). MWMA shall execute and timely deliver to Lincoln financing statements and any other documents for filing, and undertake any and all such other action, as Lincoln deems necessary or appropriate to perfect, protect and perpetuate Lincoln's security interest in the Personal Property Collateral. MWMA shall pay all fees and expenses, if any, required in connection with such filings. This Agreement shall constitute a security agreement for purposes of the Maine Uniform Commercial Code (which the parties agree shall govern the secured transaction described in this Section 14(a)) and any failure of MWMA to perform any of its obligations hereunder, including without limitation any failure to make payments of any amounts due pursuant to the provisions of Section 7 hereof or pursuant to the provisions of the said promissory note shall constitute a default, as a result of which Lincoln shall have the right to accelerate and demand payment of all monetary obligations of MWMA hereunder and shall have all of the remedies provided to a secured party under the Maine Uniform Commercial Code and hereunder, including without limitation the reversion of title to the Personal Property Collateral to Lincoln. MWMA hereby agrees to execute and deliver to Lincoln a bill of sale or any other document reasonably requested by Lincoln in order to confirm the transfer of ownership to Lincoln in the event of default hereunder.

The security interest granted above shall not affect Lincoln's rights as owner of the Lincoln Site Evaluation Data prior to passage of title under Section 13(a) hereof, and the parties recognize that granting a security interest relating to such period is merely a precautionary measure to protect Lincoln's interest therein. In order to more fully define and protect Lincoln's rights as a secured party under this Section 14(a), MWMA hereby agrees to execute and deliver to Lincoln, contemporaneously with the execution and deliver of the promissory note described in Section 8(b) hereof, a security agreement in form and substance acceptable to Lincoln.

(b) MWMA shall grant to Lincoln a first priority mortgage upon the Site contemporaneously with the execution and deliver of the promissory note described in Section 8(b) hereof. Such mortgage shall be in form and contain such provisions as shall be acceptable to Lincoln. Such mortgage shall also act as a security agreement granting a security interest in any and all machinery, equipment, furniture, fixtures and other improvements at the Site. The mortgage shall secure all MWMA's obligations under this Agreement, including obligations of payment under Section 7 hereof and under the promissory note described in Section 8(b) hereof.

(c) The above-referenced security interest and mortgage lien shall continue for so long as any obligations of MWMA hereunder or under the promissory note remain outstanding or executory, including without limitation MWMA's obligations to lease the Site to Lincoln under Section 10 hereof and Lincoln's $1.00 purchase option described in Section 10(c) hereof. Without limiting the generality of the foregoing subsections of this Section 14, the security agreement and mortgage shall each contain a prohibition upon MWMA selling, transferring, assigning, granting any interest in or liens upon or otherwise disposing of all or any portion of Personal Property Collateral or the Site.

(d) In addition, to and not in limitation of the rights and interests of Lincoln under the grant of security and mortgage described in Sections 14(a) and (b) above, in the event MWMA fails to make payment of any amounts due under Section 7 hereof or under the Promissory Note described in Section 8(b) hereof, or otherwise fails to perform any of its obligations hereunder, then Lincoln shall have the unrestricted right to terminate this Agreement effective as of the date of such default by written notice to MWMA. Following termination, Lincoln shall have no further obligations of any nature whatsoever under this Agreement and may proceed to exercise its rights as a secured party and mortgagee pursuant to the provisions of Section 14(a) and (b) hereof, including without limitation, the right to immediate possession and use of Lincoln's Site Evaluation Data.

15. <u>Appropriations</u>. This Agreement is made subject to available budgetary appropriations and shall not create any obligation of payment on behalf of MWMA in excess of such appropriations and other funds and assets available to MWMA. MWMA hereby represents that it reasonably believes that funds will be made available through appropriation by the Legislature to make all payments required hereunder and to fund all obligations of performance hereunder by MWMA. MWMA hereby covenants and agrees that it will exercise all reasonable efforts to obtain, maintain and properly request and pursue appropriation of funds and other revenue sources from which all payments to be made hereunder shall be satisfied, and through which all obligations of performance will be funded, including, without limitation, making provisions for such payments in any and all budgets submitted for the purposes of obtaining appropriations and/or funding, using all reasonable efforts to have such portion of the budget approved, and exhausting all available administrative reviews and appeals, if any, in the event such portion of the budget is not approved. It is MWMA's intent to make all payments required hereunder and perform all of its obligations hereunder if funds are legally available therefor. MWMA covenants not to give priority in the appropriation of funds to any other of its obligations, including without limitation, acquisition of any other property or the performance of any other functions required of it.

16. <u>Notices</u>. All notices required hereunder shall be given by registered or certified mail, return receipt requested, and postage prepaid, and shall be deemed given when deposited in the mail addressed as follows:

In the case of notice to MWMA:

Maine Waste Management Agency
State House Station 154
Augusta, Maine 04333

In the case of notice to Lincoln:

Lincoln Pulp & Paper Company
One Katahdin Avenue
Lincoln, Maine 04457

Either party may change the person or address to which notices are to be sent by notice in writing directed to the other party.

17. <u>Time of Essence</u>. Time is of the essence of this Agreement. Any dates or deadlines contained in this Agreement may be extended by written agreement signed by both Lincoln and MWMA.

18. Indemnity. MWMA agrees to indemnify, hold harmless and defend Lincoln and its officers, agents and employees from and against any and all claims, costs, suits or liability arising out of, or related in any way to MWMA's evaluation of the Site, development and/or operation of a landfill at the Site, processing of leachate pursuant to Section 12 hereof or breach of any of its obligations hereunder; provided, however, that MWMA does not hereby waive any defense of governmental immunity which it may have as to actions or claims by persons, partnerships, corporations or any other entities not party to this Agreement.

19. Authority and Waiver of Immunity. (a) MWMA is an agency and instrumentality of the State of Maine and has full power and authority to enter into this Agreement and all other documents related hereto to which it is a party and to carry out the terms hereof.

(b) This Agreement and all other such documents associated herewith and the performance of MWMA's obligations hereunder, have been duly and validly authorized and approved under all laws, regulations and procedures applicable to MWMA by appropriate official approval. The consent of all necessary persons or bodies has been obtained and this Agreement has been duly and validly executed and delivered by an authorized representative of MWMA and constitutes a legal, valid and binding obligation of MWMA enforceable against it in accordance with its terms.

(c) No approval, consent or withholding of objection is required from any governmental authority with respect to the entering into or performance by MWMA of this Agreement in the transactions contemplated hereby. The entering into and performance of this Agreement and the transactions contemplated hereby will not violate any judgment, order, law or regulation applicable to MWMA or result in any breach of, or constitute any default under any contract, agreement or other instrument by which MWMA or any of its properties are bound.

(d) MWMA, acting in its capacity as an agency and instrumentality of the State of Maine, hereby waives its sovereign immunity with respect to any actions or suits undertaken by Lincoln, its successors or assigns, arising out of, resulting from or involving (i) any alleged default by MWMA hereunder or failure by MWMA to observe or perform any of its obligations hereunder, (ii) collection of amounts due under the Promissory Note described in Section 8(b) hereof, and (iii) realization, foreclosure or other action against the collateral described in Section 14 hereof. It being understood and agreed that such waiver is a material inducement to Lincoln entering into this Agreement.

20. Nature of Relationship. The parties hereby agree that the relationship established hereunder is contractual in nature and the parties shall not be deemed or considered to have formed any joint venture, partnership or other joint or common enterprise with respect to the Site or in connection with the development of the landfill project.

21. Eminent Domain. Lincoln agrees that should MWMA, in its sole discretion, decide to acquire title to the Site by condemnation, Lincoln agrees to a friendly condemnation, so-called, so long as Lincoln receives the same consideration, terms and conditions and limitations as are set forth herein regarding the purchase, development and use of the Site by MWMA and, by the execution hereof, Lincoln waives and forever releases to MWMA any and all rights to a hearing on said taking, all rights to compensation, except as provided in this Agreement, all rights of appeal and any and all rights to relocation benefits, if any; provided, however, that the foregoing waiver and release is subject to the condemnation providing to Lincoln identical consideration, benefits, terms and conditions as are set forth in this Agreement in every respect without deviation of any nature whatsoever.

22. Cooperation Re Financing. Lincoln agrees to cooperate with MWMA and exercise all reasonable efforts to provide MWMA with any and all information, certifications and other material required by MWMA and its bond counsel in connection with qualification of any financing of a landfill at the Site as an "exempt facility bond" under Section 142(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Lincoln agrees to negotiate in good faith with MWMA regarding any changes that may be required in this Agreement in order to qualify any bonds issued to finance a landfill facility at the Site for tax-exemption pursuant to Section 142(a) of the Code, provided that Lincoln shall not be required to consent to any such changes that it may, in its discretion, determine to be adverse to its interests hereunder.

23. Miscellaneous. (a) This Agreement shall be binding upon, and shall run to the benefit of, the parties, their successors and assigns.

(b) This Agreement, together with all documents, exhibits and agreements incorporated herein by reference, shall be construed, governed by and administered in accordance with the laws of the State of Maine.

(c) This Agreement represents the entire understanding of the parties as regards the subject matter hereof and there are no other terms, conditions, representations or warranties, expressed or implied, written or oral, except for those set forth herein. This contract cancels and supersedes any prior contract between the parties hereto governing the subject matter hereof. No amendments, modifications or additions hereto will be binding unless executed in writing by both of the parties hereto.

(d) If either party shall on one or more occasions waive any power, right or remedy arising hereunder or under any applicable law, such waiver shall not be deemed to be a waiver upon a later occurrence or recurrence of any set of events. No reasonable delay by either party in the exercise of any power, right or remedy shall constitute, under any circumstances, a waiver of that party's power, rights or remedies. The forgiveness of performance of any obligation hereunder in any one instance or innumerous instances shall not be deemed to be a waiver of such obligation or performance in any subsequent instance.

(e) Subject to the provisions of Section 15, hereof, and notwithstanding anything else to the contrary herein contained, all obligations that remain executory after expiration or termination of this Agreement shall, to the extent permitted by applicable law, remain in full force and effect until discharged by performance thereof.

(f) The captions used in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

(g) This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF the parties have executed and delivered this Agreement as of the date set forth above.

Lincoln Pulp & Paper Co., Inc.

H. E. Warre
Witnesseth

By [signature]
Its VICE PRESIDENT

Maine Waste Management Agency

H. E. Warre
Witnesseth

By S. F. Hodge
Its Executive Director

EXHIBIT A

022070
WARRANTY DEED

SYLVAN PROPERTIES CO., a Texas general partnership with an office c/o McPherson Timberlands, 1414 Odlin Road, Bangor, County of Penobscot, State of Maine, for consideration paid, grants to LINCOLN PULP & PAPER COMPANY, a Maine corporation with a place of business in Lincoln, County of Penobscot, State of Maine, with WARRANTY COVENANTS, the following described real estate located in Township 2, Range 8 NWP, Penobscot County, State of Maine:

Certain property located in Township 2, Range 8 NWP, Penobscot County, State of Maine being more particularly described as follows:

Being Lot 14, Lot 15 and Lot 16 as depicted on a certain plan entitled "A Division of Land for Sylvan Properties Co. in Township 2, Range 8 NWP, Penobscot County, State of Maine, September 25, 1989", recorded in Penobscot Registry of Deeds, Plan D-261-89. The above described tract of land containing approximately 1,500.3 acres, more or less.

TOGETHER WITH, a certain non-exclusive right of way over land of Grantor located in Township 2, Range 8 NWP, Penobscot County, State of Maine, being 80 feet in width across Roadway A and Roadway B as the same are described in Schedule A attached hereto and incorporated herein by reference.

EXCEPTING AND RESERVING certain rights of way in favor of Grantor and others, being described as follows:

(a) a certain right of way, being 80 feet in width, over Roadway C as described in said Schedule A; and

(b) a certain right of way being 80 feet in width, over that portion of Roadway D which lies within the boundary of the herein conveyed premises, as described in said Schedule A.

Said rights of way shall be for all purposes of a way, including the ingress and egress of people, vehicles and equipment, and the right to construct, maintain, repair and extend any and all utilities, such use to be in common with others having a right to use said right of way.

Each owner of the land shall have the right to relocate the respective rights of way located thereon, in reasonable proximity to the road being replaced, taking into account the owner's use or potential use of the respective portion of the land. Each party shall be entitled to improve and maintain such rights of way to facilitate their use. Each party agrees to cooperate with the other party about restricting access to their respective premises by third parties.

ALSO CONVEYING, without warranty covenants, a certain non-exclusive right of way located in Township 2, Range 8 NWP, Penobscot County, State of Maine, being 60 feet in width, the centerline of which is described as follows: Beginning at a point being the intersection of the center of Mattamiscontis Stream and the center of the bridge connecting a gravel road; thence S 89° 57' 00" E, a distance of 433.6 feet by and along the centerline of said gravel road to a point, thence S 51° 43' 30" E, a distance of 355.4

feet by and along the centerline of said gravel road to a point being the intersection of the centerline of said gravel road and Sta. 38 of the westerly end of the access of Interstate 95 as shown on a right of way map entitled "Maine State Highway Commission, Right-Of-Way Map, State Highway "95" State Highway Commission File #10-113 Sheet 48 of 66". Meaning and intending to describe an approximately 789 foot right of way, 60 feet wide at all points, from the Mattamiscontis Stream, across land owned by IP Timberlands Operating Company, Ltd., to the above-described access to Interstate 95. Being the same right of way granted to Grantor by deed of IP Timberlands Operating Company, Ltd., dated September 12, 1988, recorded at Penobscot Registry of Deeds, Volume 4309, Page 31.

SUBJECT TO the reservations and exceptions contained in a certain deed to Grantor from John W. Campbell, Jr., et al., dated February 1, 1984, recorded at Penobscot Registry of Deeds, Volume 3491, Page 207. Also being SUBJECT TO the conditions and restrictions contained in a deed to Grantor from IP Timberlands Operating Company, Ltd., dated September 12, 1988, recorded at Penobscot Registry of Deeds, Volume 4309, Page 31.

All rights of way shall be in common with the Grantor and others, including future assignees and grantees of Grantor.

Grantee shall have the right to maintain and repair all roadways and utilities located within said rights of way and shall maintain and repair all damage to the roadways located within said rights of way to the extent that such damage was caused in whole or in part by Grantee or its servants or agents.

This conveyance is made further SUBJECT TO the following covenants and restrictions which shall run with the land:

1) No Hazardous Waste, as this term is defined in 38 M.R.S.A. §1303-C, shall be disposed of in, upon or beneath the premises hereby conveyed.

2) No solid waste or special waste generated by any person, corporation, municipality, group, individual or entity, other than the said Lincoln Pulp and Paper Co., Inc. or Eastern Fine Paper, Inc., or their successors or assigns, shall be disposed of on the premises, except as required or permitted by law or by the provisions of applicable federal or state licenses.

All of the above described premises are subject to all prescriptive easements and all easements of record.

Grantee and its successors and assigns agree to hold Grantor harmless from and indemnify Grantor against any and all claims, demands, expenses, judgments, and awards ascertained against, incurred by or imposed upon Grantor arising in any manner in connection with Grantee's exercise of its rights in and to the Rights of Way, unless the foregoing arise solely from the improper acts or negligence of the Grantor or such other persons, or arise from occurrences beyond the reasonable control of the Grantee or such other person. Grantor and its successors and assigns agree to hold Grantee harmless from and indemnify Grantee against any and all claims, demands, expenses, judgments and awards ascertained against, incurred by or imposed upon Grantee arising in any manner in connection with Grantor's exercise of its rights in and to the Rights of Way, unless the foregoing arise solely from the improper acts or negligence of the Grantee or such other persons, or arise from occurrences beyond the reasonable control of the Grantor or such other person. In the event of concurrent use of the Rights of Way resulting in any event which gives rise to one or more claims of liability on the part of either or both parties, then each party will be responsible for that percentage or proportion of damages assigned to it in the judgment establishing such liability.

The herein conveyed premises are conveyed subject to the provisions of the Maine Tree Growth Tax Law (36 M.R.S.A. §571 et seq.), to the extent it may affect said premises. Grantees shall be liable for the payment of any penalty assessed for the withdrawal of any of the herein conveyed premises from taxation under the Tree Growth Tax Law on or after the date hereof.

This conveyance is made subject to the real estate taxes assessed against the herein conveyed premises for the current year, which taxes shall be pro-rated between the parties as of the date of delivery of this deed.

SYLVAN PROPERTIES CO. has caused this instrument to be duly executed on its behalf by S. Reed Morian and Carroll R. Hochner, its Co-Managing General Partners, this 27th day of July, 1990.

Witness:

Dana Tomlin

Alan Carlisle

SYLVAN PROPERTIES CO.

By: S Reed Morian
S. Reed Morian,
Co-Managing General Partner

By: Carroll R Hochner
Carroll R. Hochner
Co-Managing General Partner

STATE OF TEXAS

HARRIS, ss. July 27, 1990

Personally appeared the above named Carroll R. Hochner and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said partnership.

Before me,

Patricia Ann Lang

Notary Public/Attorney

SEAL

Patricia Ann Lang

Type or Print Name

My Comm. Exp. May 18, 1992

"Maine Real Estate Transfer Tax Paid"

SCHEDULE A

Right Of Way No. 1:

A certain right of way, being 80 feet in width, over land of Sylvan Properties Co. and being that portion of right of way shown on a plan entitled "A Division of Land for Sylvan Properties Co. in Township 2, Range 8 NWP, Penobscot County, State of Maine, September 25, 1989", recorded in Penobscot Registry of Deeds, Plan D-261-89 which is labeled Roadway "A" on a the attached reproduction of a portion of said plan, and more particularly described as follows:

Beginning at the point of intersection of an existing gravel road with the center of the Mattamiscontis Stream, said point of intersection labeled "A" on the above mentioned plan; thence following the center line of said existing gravel road along the following bearings and distances; thence N 51° 50' 40" W 208.4 feet to a point; thence N 77° 06' 20" W 119.1 feet to a point; thence N 85° 58' 00" W 320.3 feet to a point; thence S 88° 13' 30" W 118.3 feet to ya point; thence S 68° 12' 20" W 164.7 feet to a point; thence S 63° 24' 50" W 277.6 feet to a point; thence S 76° 08' 30" W 140.0 feet to a point; thence N 85° 31' 50" W 113.3 feet to a point; thence N 67° 54' 50" W 157.0 feet to a point; thence N 74° 13' 50" W 160.0 feet to a point; thence S 63° 20' 40" W 142.1 feet to a point; thence S 45° 33' 20" W 182.3 feet to a point; thence S 72° 38' 00" W 196.3 feet to a point; thence N 74° 30' 20" W 205.8 feet to a point; thence N 65° 43' 50" W 206.8 feet to a point, said point being labeled "B" on above referred to plan; thence S 88° 28' 30" W 198.1 feet to a point; thence S 82° 37' 00" W 188.6 feet to a point; thence S 56° 37' 20" W 145.2 feet to a point; thence S 29° 06' 20" W 220.8 feet to a point; thence S 03° 52' 10" W 140.4 feet to a point being labeled "C" on said plan; thence S 40° 43' 10" W 238.9 feet to a point; thence N 61° 23' 30" W 187.7 feet to a point; thence N 51° 28' 30" W 65.0 feet to a point; thence N 41° 54' 20" W 293.4 feet to a point; thence N 54° 16' 20" W 84.3 feet to a point; thence N 57° 44' 30" W 124.3 feet to a point; thence N 46° 30' 00" W 126.3 feet to a point; thence N 39° 37' 20" W 188.7 feet to a point; thence N 37° 55' 20" W 131.8 feet to a point; thence N 32° 54' 00" W 98.9 feet to a point; thence S 88° 52' 30" W 90.1 feet to a point of intersection with the center line of above described road and the easterly boundary line of land to be conveyed to Lincoln Pulp & Paper, said point being located S 02° 18' 40" W 599.8 feet from an angle point on the easterly boundary line of land to be conveyed to Lincoln Pulp & Paper and labeled "D" on said plan.

Meaning and intending to describe a right of way over Roadway "A" as labeled on the attached plan.

Right Of Way No. 2:

A certain right of way, being 80 feet in width, over land of Sylvan Properties Co. and being that portion of right of way shown on a plan entitled "A Division of Land for Sylvan Properties Co. in Township 2, Range 8 NWP, Penobscot County, State of Maine, September 25, 1989", recorded in Penobscot Registry of Deeds, Plan D-261-89 which is labeled Roadway "B" on a the attached reproduction of a portion of said plan, and more particularly described as follows:

Beginning at the point of intersection of an existing gravel road with the center line of another existing gravel road and a point labeled "C" on the above mentioned plan; thence following the center line of said existing gravel road along the following bearings and distances; thence S 13° 01' 10" W 107.7 feet to a point; thence S 18° 08' 30" E 138.3 feet to a point; thence S 05° 40' 00" E 91.3 feet to a point; thence S 08° 23' 20" E 336.4 feet to a point; thence S 07° 02' 30" E 84.1 feet to a point; thence S 07° 58' 20" W 159.9 feet to a point; thence S 10° 44' 40" W 300.2 feet to a point labeled "E" on said plan; thence S 66° 40' 10" W 343.7 feet along the center line of a woods road to a point; thence S 42° 35' 30" W 231.1 along the center line of said woods road to a point; thence N 80° 15' 20" W 86.8 feet to a point; thence N 50° 29' 10" W 220.3 feet to a point; thence N 38° 20' 20" W 155.8 feet to a point; thence N 05° 31' 50" W 127.4 feet to a point; thence N 58° 02' 40" W 197.8 feet to a point; thence S 70° 24' 20" W 270.3 feet to a point of intersection with the easterly boundary line of land to be conveyed to Lincoln Pulp & Paper Co. and the center line of the above described right of way, said point labeled "F" as shown on above referred to plan and also being an angle point in the easterly boundary line of said Lincoln Pulp & Paper Co.;

Meaning and intending to describe a right of way over Roadway "B" as labeled on the attached plan.

Right Of Way No. 3:

A certain right of way, being 80 feet in width, over land of Sylvan Properties Co. and being that portion of right of way shown on a plan entitled "A Division of Land for Sylvan Properties Co. in Township 2, Range 8 NWP, Penobscot County, State of Maine, September 25, 1989", recorded in Penobscot Registry of Deeds, Plan D-261-89 which is labeled Roadway "C" on a the attached reproduction of a portion of said plan, and more particularly described as follows:

Beginning at a point of intersection with the easterly boundary line of land to be conveyed to Lincoln Pulp & Paper Co. with the center line of an existing gravel road at a point labeled "D" on above mentioned plan; thence following the center line of said existing gravel road along the following bearings and distances; thence S 88° 52' 30" W 67.5 feet to a point; thence N 82° 05' 10" W 104.4 feet to a point; thence N 81° 25' 50" W 117.6 feet to a point; thence S 69° 37' 30" W 121.6 feet to a point; thence S 49° 19' 10" W 110.5 feet to a point; thence S 43° 08' 30" W 148.4 feet to a point; thence S 38° 00' 30" W 506.2 feet to a point; thence S 27° 14' 40" W 225.7 feet-to a point; thence S 37° 36' 00" W 299.3 feet to a point; thence S 28° 30' 00" W 176.7 feet to a point; thence S 23° 39' 20" W 367.9 feet to a point; thence S 45° 06' 00" W 188.3 feet to a point; thence S 43° 57' 30" W 284.8 feet to a point; thence S 45° 27' 20" W 342.5 feet to a point; thence S 86° 39' 50" W 150.2 feet to a point; thence N 49° 50' 30" W 251.2 feet to a point; thence N 57° 21' 10" W 252.2 feet to a point; thence N 59° 05' 40" W 125.5 feet to a point; thence N 63° 16' 40" W 129.4 feet to a point; thence N 56° 37' 20" W 159.3 feet to a point; thence N 80° 42' 40" W 251.8 feet to a point; thence S 48° 25' 10" W 172.7 feet to a point; thence S 34° 10' 40" W 182.7 feet to a point; thence S 54° 47' 00" W 139.3 feet to a point; thence S 86° 58' 50" W 171.7 feet to a point; thence S 87° 14' 40" W 271.6 feet to a point; thence S 73° 34' 20" W 128.4 feet to a point; thence S 76° 26' 50" W 126.9 feet to a point; thence S 85° 20' 40" W 348.2 feet to a point; thence N 83° 30' 20" W 302.5 feet to a point; thence N 72° 24' 40" W 263.1 feet to a point; thence N 41° 48' 00" W 301.7 feet to a point; thence N 39° 59' 10" W 229.7 feet to a point; thence N 37° 38' 00" W 170.8 feet to a point; thence N 38° 53' 20" W 365.8 feet to a point; thence N 53° 41' 40" W 118.9 feet to a point; thence N 73° 22' 10" W 207.4 feet to a point; thence N 86° 41' 50" W 332.3 feet to a point;

thence N 82° 37' 20" W 300.8 feet to a point; thence N 82° 49' 10" W 76.6 feet to a point of intersection with the westerly boundary line of land to be conveyed to Lincoln Pulp & Paper Co. and the center line of said gravel road, and a point labeled "G" on said plan, said point being located S 08° 04' 15" W 2877.6 feet from the southerly boundary line of the Canadian Pacific Railroad;

Meaning and intending to describe a right of way over Roadway "C" as labeled on the attached plan.

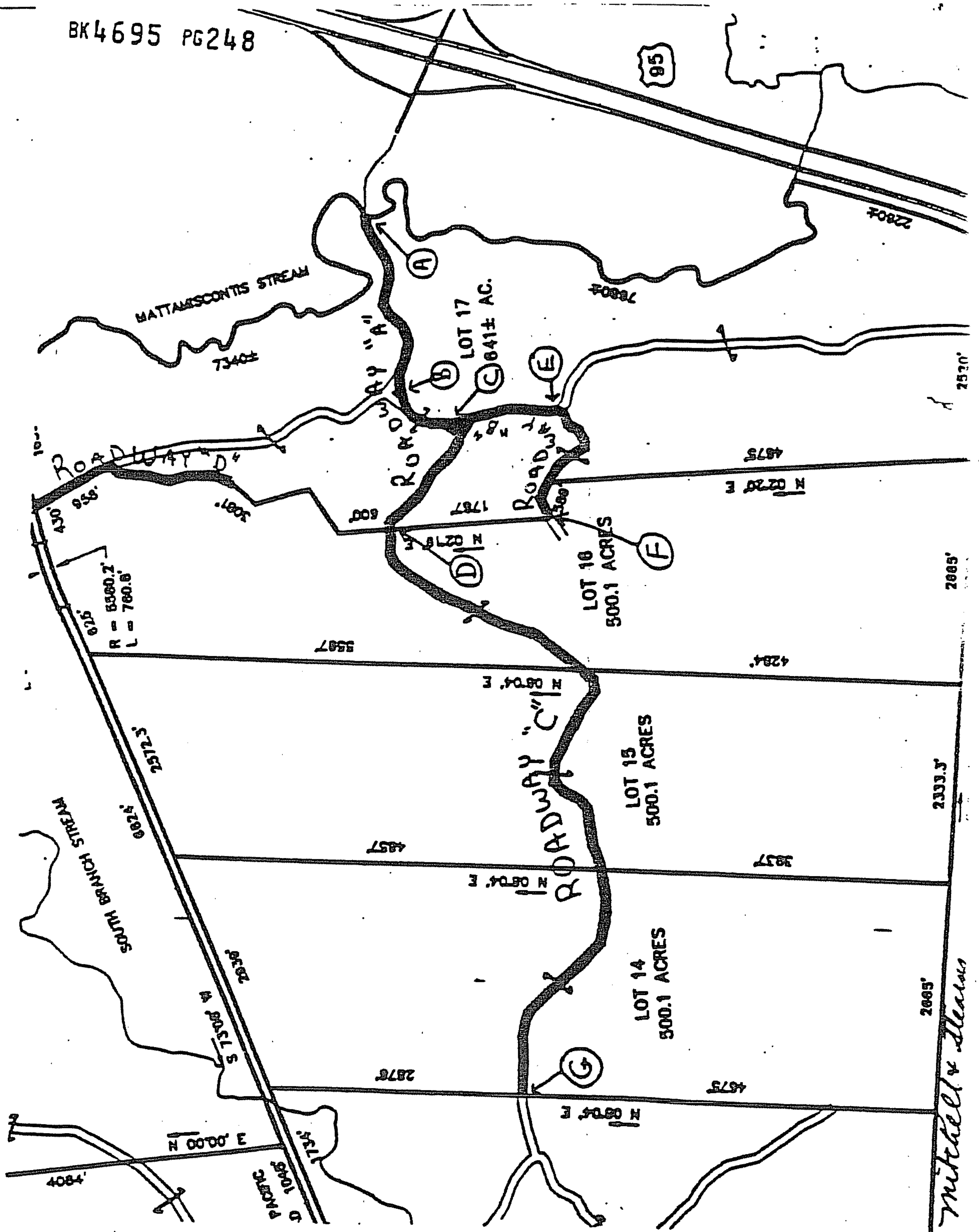
Right Of Way No. 4:

A certain right of way, being 80 feet in width, over land of Sylvan Properties Co. and being that portion of right of way shown on a plan entitled "A Division of Land for Sylvan Properties Co. in Township 2, Range 8 NWP, Penobscot County, State of Maine, September 25, 1989", recorded in Penobscot Registry of Deeds, Plan D-261-89 which is labeled Roadway "D" on a the attached reproduction of a portion of said plan, and more particularly described as follows:

Beginning at a point of intersection of the southerly boundary line of the Canadian Pacific Railroad with the centerline of an existing gravel road, said point of intersection being the northeasterly corner of the within conveyed premises; thence southeasterly along the centerline of said gravel road by the following courses and distances S 25° 35' 50" E 396.6 feet; thence S 25° 30' 10" E 365.4 feet; thence S 17° 41' 50" E 195.4 feet to the intersection of said gravel road with the centerline of an existing woods road; thence continuing southwesterly and southeasterly along the centerline of said woods road by the following courses and distances S 53° 30' 15" W 112.8 feet: thence S 22° 24' 15 W 73.3 feet; thence S 13° 41' 20" W 143.1 feet; thence S 10° 17' 45" W 145.2 feet; thence S 21° 16' 40" W 184.6 feet; thence S 09° 00' 00" W 65.1 feet; thence S 12° 03' 20" E 124.0 feet; thence S 11° 23' 30" E 70.2 feet; thence S 03° 48' 30" W 151.5 feet; thence S 06° 36' 15" W 171.3 feet; thence S 33° 23' 40" W 76.0 feet; thence S 24° 41' 20" W 101.5 feet to where said woods road is intersected by the following described line: N 47° 14' 30" E 409.4 feet, said line being part of the easterly boundary line of said parcel herein conveyed.

Meaning and intending to describe a right of way over Roadway "D" as labeled on the attached plan.

BK4695 PG248



PENOBSCOT, ss REC'D

90 AUG -3 PM 3:57

ATTEST:
Cynthia Gallant Grove,
REGISTER

JAN 13 1993

ADDENDUM TO AGREEMENT REGARDING
SOLID WASTE LANDFILL DEVELOPMENT

This Addendum entered into this 14th day of January, 1993 between Lincoln Pulp & Paper Co., Inc. ("Lincoln") a Delaware corporation with a place of business in Lincoln, Maine and the Maine Waste Management Agency ("MWMA") a governmental agency of the State of Maine with its office in Augusta, Maine.

WITNESSETH

WHEREAS, Lincoln and MWMA entered into an Agreement Regarding Solid Waste Landfill Development dated July 20, 1992; and

WHEREAS, Lincoln and MWMA desire to amend the deadline set forth in Section 6 of the said Agreement and add certain provisions regarding access to rail lines adjacent to the property;

NOW, THEREFORE, Lincoln and MWMA hereby agree

1. That the 180 day deadline set forth in clause (a) of Section 6 of such agreement be and hereby is extended to 215 days. The first line of Section 6 of the said Agreement is hereby amended such that the number "180" shall hereafter read "215";

2. That a new Section 24 be added to the Agreement reading as follows:

> "**24.** <u>Access to Rail Lines</u>. Any deed, lease or other grant, conveyance or transfer of a property interest in or to the Site from Lincoln to MWMA shall contain an easement granting Lincoln reasonable access from I95 over existing right of way easements and the Site itself to the rail lines located along the northern border of the Site. Attached hereto as Exhibit B is a depiction of the Site reflecting the current Canadian Pacific Rail Lines located along its northerly border. The parties shall agree upon the specific location of the access easement at the time of conveyance of any interest in the Site. The easement will be laid out so as to provide reasonably convenient access to the rail lines, while at the same time, not hampering or impairing the utilization of the Site for its intended purposes by MWMA.

3. Except as specifically provided above, the terms and provisions of the said Agreement shall remain in full force and effect as originally executed and delivered by the

parties, including without limitation all other time deadlines set forth in the said Agreement.

IN WITNESS WHEREOF the parties have executed and delivered this Addendum as of the date set forth above.

LINCOLN PULP & PAPER

By: ______________________
Its Vice President

MAINE WASTE MANAGEMENT AGENCY

By: ______________________
Its Executive Director

6024.1-CCR

MEMORANDUM

To: Lincoln/MWMA Working Group

From: C. Howard

Re: Landfill Contract

Dated: June 22, 1992

Basic Scenarios	Results
1. MWMA proceeds to FSB and provides 74 day Notice	■ No immediate result. Contract continues (Sec. 3)
2. MWMA does not provide 74 day notice re proceeding	■ Contract terminates. Lincoln keeps $250,000 and Data. (Sec. 3)
3. 180 days expires without FSB action or negative FSB action	■ Contract terminates. Lincoln keeps $250,000 and Data (Sec. 6)
4. Affirmative FSB decision within 180 days	■ MWMA buys Data for 787,620 paid in semi-annual installments (Sec. 7) ■ MWMA buys Site for a Note (Sec. 8)
5. MWMA receives license within 27 mo. and Lincoln has not exercised its lease option	■ Note comes due (Sec. 8) ■ Lincoln's lease option still exists as hedge against no construction (Sec. 10)
6. Lincoln exercises lease option pre-License	■ Note comes due, <u>but</u> base rent offsets Note and no money changes hands. (Sec. 10(c)(i)) ■ MWMA owns Site without having paid for it. (Sec. 8 & 10) ■ Lincoln has right to use Site under Lease (Sec. 10) ■ Lincoln has right to use Data and will buy what it uses. (Sec. 10(c)) ■ MWMA may terminate the lease, <u>but</u> must pay for Site and improvements and provide space to Lincoln if it does so. (Sec. 10(h))

- Lincoln has a $1.00 purchase option because MWMA never paid for the Site, <u>but</u> this cannot be exercised until 27 month mark. (Sec. 10(c))
- MWMA's termination right has priority over Lincoln's $1.00 option. (Sec. 10(h))
- Lincoln can require MWMA to pay for the Site and continue the lease. (Sec. 10(i))

7. Lincoln exercises lease option post-License

- MWMA already paid for Site at License issuance (Sec. 8(b))
- Lincoln has right to Data and will buy what it uses. (Sec. 10(d))
- MWMA will cooperate with Lincoln in transferring License to Lincoln. If transferred, Lincoln will buy License at MWMA cost. (Sec. 10(e))
- Lincoln has <u>no</u> purchase option. Its rights are limited to lease.
- MWMA has termination right and must pay book value for Lincoln's improvements. (Sec. 10(h))

8. Lincoln has not exercised lease option and MWMA does not get License within 27 mo.

- Lincoln exercises lease option (Sec. 10(b))
- Note matures, but no money changes hands because of base rent offset (10(c)(i))
- Lincoln exercises $1.00 purchase option and gets Site back still without money changing hands (Sec. 10(c))
- MWMA has priority right to terminate the lease, <u>but</u> must pay for the Site as part of its termination right (Sec. 10(h)).